IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.216 OF 2005

Mahadeo Balu Mali & others. ... Appellants.
Versus.
Namdeo Sadashiv Mali
(since deceased through LRs.)
Smt.Sakhubai Namdeo Mali & others. ... Respondents.

Shri N.J.Patil for the Appellants.

Shri T.S.Ingle for the Respondents Nos.1 to 7.

CORAM : ABHAY S. OKA, J.

DATED : 27th April, 2005.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Second Appeal is filed by the unsuccessful original Plaintiff. The case of the original Plaintiff was that the entries in the consolidation scheme show that they are in exclusive possession of the suit property. The case of the Respondent was that the suit property was ancestral property and there is no partition effected. The case made out by the Appellant regarding the earlier partition and allotment of the suit property in the said partition in favour of the Appellants has been disbelieved. The trial Court has considered the statements made by the Appellants in the proceedings under the Maharashtra Agricultural Land (Ceiling on Holding) Act,1961, as well as the statements made before the Revenue officer. The Appellate Court found that the case made out by the Appellants before

the said two authorities was totally inconsistent with the case of partition pleaded by the Appellants. After considering the oral and documentary evidence on record, the Courts below have disbelieved the case of the Appellants of earlier partition.

2. Assuming that the entries in the consolidation scheme show that the Appellants are in exclusive possession, the Appellants cannot obtain an injunction against the co-sharers.

3. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.